

CALIFORNIA OFFICE OF ADMINISTRATIVE LAW

SACRAMENTO, CALIFORNIA

In re:

Request for Regulatory
Determination filed by
Mercy Hospital of
Sacramento concerning
rules, procedures and
policies of the
California Children's
Services Division of the
Department of Health
Services for the designa-
tion and operation of
hematology/oncology
centers and the policy
of requiring treatment
at CCS designated facili-
ties.¹

1987 OAL Determination No. 11

[Docket No. 86-017]

August 27, 1987

Determination Pursuant to
Government Code Section
11347.5; Title 1,
California Administrative Code,
Chapter 1, Article 2

ENDORSED FILED
IN THE OFFICE OF

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MARCH FONG EU
SECRETARY OF STATE
OF CALIFORNIA

Determination by:


LINDA HURDLE STOCKDALE BREWER, Director

John D. Smith, Chief Deputy Director/
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Herbert F. Bolz, Coordinating Attorney
David Potter, Staff Attorney
Rulemaking and Regulatory
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SYNOPSIS

The issue presented to the Office of Administrative Law is whether (1) the rules of the Department of Health Services for the designation of hematology/oncology centers under the California Children's² Services program and (2) the Department's policy of requiring juvenile patients who suffer from oncological and hematological diseases to be referred to such centers for diagnosis, are "regulations" required to be adopted in compliance with the Administrative Procedure Act.³

The Office of Administrative Law has concluded that the Department of Health Services has unlawfully utilized rules concerning the approval and operation of specialized centers under the California Children's Services program.

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THE ISSUE PRESENTED 4

The Office of Administrative Law ("OAL") has been requested to determine whether the rules and criteria of the Department of Health Services ("Department") for the designation of hematology/oncology centers under the California Children's Services ("CCS") program and the Department's policy of requiring juvenile patients who suffer from oncological and hematological diseases to be referred to such centers for diagnosis, evaluation, and development of a treatment plan are "regulations" as defined in Government Code section 11342, subdivision (b), and are therefore invalid and unenforceable unless adopted as regulations and filed with the Secretary of State in accordance with the Administrative Procedure Act.

THE DECISION 5,6,7

The Office of Administrative Law (OAL) finds that the above noted rules, criteria and policies concerning the designation of hematology/oncology centers and the referral of juvenile patients to such centers (1) are "regulations" as defined in the APA, and (2) are subject to the requirements of the APA.⁸

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I. AGENCY, AUTHORITY, APPLICABILITY OF APA; BACKGROUND

Agency

The Robert W. Crown California Children's Services Act is codified in the Health and Safety Code.⁹ Under this Act, the Department has the responsibility for the administration of the CCS Program. The program provides necessary medical services to physically handicapped persons under the age of 21 whose parents are unable to pay for such services.

The CCS program, formerly named the Crippled Children's Services program, was created in 1927. Its primary purpose is to provide medical services to physically handicapped children. The program is organized to receive and spend funds made available to the state by the federal government through the Maternal and Child Health Services Block Grant.

Authority ¹⁰

Health and Safety Code section 208, subdivision (a) provides that the Department of Health Services ". . . may adopt and enforce rules and regulations for the execution of its duties." One of the duties of the Department is reflected in Health and Safety Code section 249, which provides in part that:

"The State Department of Health Services shall establish and administer a program of services for physically defective or handicapped persons under the age of 21 years, in cooperation with the federal government through its appropriate agency or instrumentality, for the purpose of developing, extending and improving such services."

Under the above-noted code sections, the Department has express rulemaking authority.

Applicability of the APA to Agency's Quasi-Legislative Enactments

The APA applies to all state agencies, except those "in the judicial or legislative departments."¹¹ Since the Department is in neither the judicial nor the legislative branch of state government, we conclude that APA rulemaking requirements generally apply to the Department.¹²

In any event, Welfare and Institutions Code section 10725 makes it clear that the Department's rulemaking is subject to the APA. With reference to the powers of the Director of Health Services, section 10725 provides in part:

"The director may adopt regulations, orders, or standards of general application to implement,

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interpret, or make specific the law enforced by the department, and such regulations, orders, and standards shall be adopted, amended, or repealed by the director only in accordance with the provisions of [the APA]." [Emphasis added.]

Background

The following undisputed facts and circumstances have given rise to the present determination.

The CCS program is mandated by statute.¹³ As already noted, the program was created to provide necessary medical services to physically handicapped children. Health and Safety Code section 250.5 provides only a very general definition of the term "handicapped child" and instructs the director of the Department of Health Services to establish a list of conditions which come within the definition of a physical handicap. This list, which was last amended in 1979, appears in section 2901 of Title 17 of the California Administrative Code ("CAC"). The definition includes a list of twenty conditions or categories of physical maladies and an open class of "[o]ther disabling or disfiguring conditions which are handicapping." Children so affected may be eligible for free or subsidized medical services. Their receipt of these services depends upon parental financial eligibility, except when CCS medical services are provided in the public schools.

The services available through CCS are set forth in Health and Safety Code section 251 and include expert diagnosis; medical, surgical, and special treatment; hospital care; physical and occupational therapy; materials; appliances; and incidental maintenance, transportation and care. The Department has implemented criteria for some of the services offered by CCS and additional definitions concerning such services in sections 2903 through 2923 of Title 17 of the CAC.

The legislation establishing the CCS program contains further directives to the Department and to each county which shape the program's activities. Health and Safety Code section 252 requires each county to designate an agency to administer the CCS program. Health and Safety Code section 253 instructs the Department or designated county agency to seek out handicapped children and to make available expert diagnosis of their medical conditions. Health and Safety Code section 253.5 incorporates regulations of the United States Children's Bureau as further guidance for these case finding activities. Section 253.5 also requires the Department to keep records concerning all of the conditions diagnosed by the program. Pursuant to Health and Safety Code section 262, the Department and designated county agencies must maintain

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surveillance and supervision over the services provided under authorization of the CCS program.

As noted above, the Department has been assigned responsibility for the administration of the CCS program. Among the Department's powers is the authority to adopt regulations to implement, interpret, and make specific the characteristics of the program and the manner in which it operates.¹⁴ Administrative regulations implementing the CCS program are found in Title 17 of the CAC.¹⁵

In addition to the statutes and administrative regulations identified immediately above, the CCS program of the Department has issued an extensive manual for the operation of the CCS program. The CCS Manual is a 1449-page document. It is divided into eight chapters,¹⁶ covering all aspects of the program. Chapter 1 is identified as "The Procedure Manual." The first paragraph therein provides as follows:

"This Manual contains the procedures necessary for the operation of California Children Services (CCS). These procedures are established by the Director of the State Department of Health Services to implement the provisions of various laws and regulations relating to the operation of the program. These laws and regulations include pertinent provisions of the Health and Safety Code, Administrative Code, Federal Government Regulations, and the Administrative Manual of the State Department of Health Services, and such rules, regulations, and procedures as may be established by the Director, State Department of Health Services."
[Emphasis added.]

Consistent with this description, the CCS Manual contains quotations and excerpts from statutes and lawfully adopted regulations which concern various aspects of the CCS program. However, the CCS Manual also contains informally adopted¹⁷ rules developed by the Department for the administration of the CCS program. This determination concerns those informally adopted rules.

Facts

CRITERIA FOR APPROVAL OF CENTERS

Mercy Hospital of Sacramento (Mercy) filed a request for determination on December 12, 1986 with OAL. Mercy has asked OAL to determine whether the Department's rules and criteria for the designation of special hematology/oncology centers under the CCS program are invalid "regulations."

The CCS Manual does not clearly identify which of its rules and criteria apply to such centers. It is therefore

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necessary to rely upon certain letters issued by the CCS program in connection with past hematology/oncology center approvals which indicate that various rules from the CCS Manual apply. These letters are attached as exhibits in Mercy's Request for Determination. The Department has not disputed Mercy's contention that the letters correctly state the Department's policies concerning designation of hematology/oncology centers.

Mercy has identified the following rules which have some relationship to the Department's approval of such centers.

a) Section 1.4.5 of the CCS Manual states: "Providers of services for eligible children shall be chosen from those qualified under the requirements set forth in Chapter 3 of this Manual."

b) Chapter 3 of the CCS Manual, entitled "Vendor Standards," sets forth standards for approval of hemophilia and sickle cell anemia centers. Evidence submitted by the requester indicates that the Department has used these standards to evaluate hematology/oncology centers.

(1) A group of letters from Esmond S. Smith, M.D., Chief of the CCS program, to three different hospitals concerning what were evidently their requests for approval as CCS hematology/oncology centers, indicates that it was the practice of the Department to evaluate such applications according to the standards for hemophilia and sickle cell anemia centers (other types of specialized centers). These letters were prepared in November, 1977; May, 1979; and June, 1980. The Department has not submitted any information to OAL to indicate that the policy described in the letters has changed.

(2) The standards for specialized centers for persons with hemophilia are set out in section 3.27 of the CCS Manual; the standards for sickle cell anemia centers appear in section 3.29. Each of these sections requires the specialized centers to be located in hospitals approved for "Long Term" (Tertiary Hospital) care by the CCS program. The Department's application of the long term care standards to hospitals which seek designation as hemophilia/oncology centers is confirmed by two letters from CCS to Presbyterian Hospital of the Pacific Medical Center. These letters, prepared in January and March of 1983 concerning the hospital's request for designation as a hematology/oncology center, state that "specialized centers under CCS must be located in a tertiary level hospital authorized by CCS for long term care."

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(3) The criteria for long term care approval are set forth in section 3.3.4.C. of the CCS Manual. These standards are structured so that "long term [care] hospitals" must meet all of the criteria for "Standard Approval" (CCS Manual section 3.3.4.B.) plus those requirements listed in section 3.3.4.C.

It therefore appears, as the requester contends, that the rules for the Department's designation of CCS hematology/oncology centers include all of the requirements set forth in CCS Manual sections 3.3.4.B ("Standard Approval"); 3.3.4.C ("Long Term Approval"); 3.27 ("Standards for Centers for Persons with Hemophilia");¹⁸ and 3.29 ("Standards for Centers for Persons with Sickle Cell Disease").

REQUIREMENT TO REFER TO CENTER

Mercy has also asked OAL to determine whether the Department's policy of requiring doctors who treat juvenile patients who suffer from oncological and hematological diseases to refer these patients to specialized hematology/oncology centers for diagnosis, evaluation, and development of a treatment plan is a "regulation" as defined in Government Code section 11342, subdivision (b). Rules implementing the challenged policy are set forth in Chapter 2 of the CCS Manual, entitled "Medical Eligibility." Following the table of contents, an introductory historical review and a user's guide, Chapter 2 begins by quoting Health and Safety Code section 251, which specifies the types of services which the CCS program provides. The CCS Manual then states, in section 2.2.1.B:

"The above services and the manner in which they are provided for any eligible condition are limited by the administrative procedure as outlined in this chapter." [Emphasis added.]

Chapter 2 sets out administrative procedures applicable to CCS-provided services for diseases of blood and blood-forming organs (dyscrasias) and for tumors (neoplasms). Section 2.6.1.B provides:

"Children with, or suspected of having, any blood dyscrasia should be referred to a CCS panel pediatric hematologist/oncologist (children 14 years and older may be referred to an internist hematologist/oncologist) at a CCS-approved hematology/oncology center (see Manual, Chapter 7.16), hemophilia center (see Manual, Chapter 7.15), or sickle cell disease center (see Manual, Chapter 7.17) for diagnosis, evaluation, and the development of a treatment plan. Ongoing care may be provided at

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the center or in the community with the concurrence of the center staff."

Similarly, section 2.4.1.D provides:

"Children with, or suspected of having, neoplasms shall be referred to a CCS panel pediatric oncologist (children 14 years and older may be referred to an internist oncologist) at a CCS-approved hematology/oncology center (see Manual, Chapter 7.16) for diagnosis, evaluation, and the development of a treatment plan. Ongoing care may be provided at the center or in the community with the concurrence of the center staff."

The requester maintains that the above quoted policies are "regulations" which have been issued and utilized by the Department for conduct of the CCS program, and that such rules have not been adopted in accordance with the procedures set forth in the APA.

II. DISPOSITIVE ISSUES

There are two main issues before us:¹⁹

- (1) WHETHER THE CHALLENGED RULES ARE "REGULATIONS" WITHIN THE MEANING OF THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342.
- (2) WHETHER THE CHALLENGED RULES FALL WITHIN ANY ESTABLISHED EXCEPTION TO APA REQUIREMENTS.

FIRST, WE INQUIRE WHETHER THE CHALLENGED RULES ARE "REGULATIONS" WITHIN THE MEANING OF THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342.

In pertinent part, Government Code section 11342, subdivision (b) defines "regulation" as:

" . . . every rule, regulation, order or standard of general application or the amendment, supplement or revision of any such rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure" [Emphasis added.]

Government Code section 11347.5, authorizing OAL to determine whether or not agency rules are "regulations," provides in part:

"No state agency shall issue, utilize, enforce or attempt to enforce any guideline, criterion, bulletin, manual, instruction [or] . . . standard of

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general application . . . which is a regulation as defined in subdivision (b) of section 11342, unless the guideline, criterion, bulletin, manual, instruction [or] . . . standard of application . . . has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter" [Emphasis added.]

Applying the definition of "regulation" found in Government Code section 11342, subdivision (b) involves a two-part inquiry:

First, is the informal rule either

- o a rule or standard of general application or
- o a modification or supplement to such a rule?

Second, does the informal rule either

- o implement, interpret, or make specific the law enforced or administered by the agency or
- o govern the agency's procedure?

For each of the Department's rules challenged by the requester, the answer to both parts of this inquiry is "yes." All hospitals that wish to offer hematological and oncological services to juvenile patients in a facility which enjoys the privileges of a designated specialized hematology/oncology center under the CCS program must comply with the standards set forth in sections 3.3.4.B, 3.3.4.C, 3.27, and 3.29 of the CCS Manual. The standards are therefore applied generally.

Similarly, all hospitals that wish to offer the full range of diagnostic services to juvenile patients suspected of having any blood dyscrasia or tumor must instead, according to CCS Manual sections 2.6.1.B and 2.4.1.D, refer these patients to a CCS-approved hematology/oncology center. These standards are applied generally, to all similarly situated hospitals confronted with a young patient who has, or is suspected of having, a disease described in the rules.

In the course of its administration of CCS services, the Department uses these standards of general application and other rules from the CCS Manual as a guide for the operation of the program. Several examples of standards implemented by the CCS Manual will illustrate this point.

Hospitals which seek designation as hematology/oncology centers for the CCS program must obtain several types of approval from the Department. The CCS Manual indicates that all of the requirements for "standard approval" apply to

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hematology/oncology centers. Some of the requirements for standard approval listed in CCS Manual section 3.3.4.B are regulations contained in sections 2904 and 2905 of Title 17 of the CAC. Other requirements, however, are imposed only by the CCS Manual. Among the standards implemented by the CCS Manual is section 3.3.4.B.2.f which requires the hospital to have certain equipment:

"Specialized equipment including, but not limited to, that listed below shall be located in, or adjacent to, the pediatric unit:

- (1) infant tracheotomy set
- (2) infant laryngoscope
- (3) endotracheal tubes 12F to 32F
- (4) cut-down set
- (5) infant transfusion set and intravenous infusion sets
- (6) infant spinal needles
- (7) incubator
- (8) oxygen and suction piped to rooms
- (9) humidifying equipment[.]"

Another example of one of the standards applicable to hematology/oncology centers may be drawn from the requirements for "long term hospitals." CCS Manual section 3.3.4.C.5 provides:

"A planned recreational or activity program directed by a qualified professional person shall be provided."

Most of the standards applicable to hematology/oncology centers are set forth in CCS Manual sections 3.29 and 3.27. As previously noted, these sections of the Manual state that they apply to hemophilia and sickle cell anemia specialized centers and they do not mention hematology/oncology centers. Nevertheless, the available evidence indicates that the Department uses these standards to review applications for approval of CCS hematology/oncology centers. Each of these sections of the Manual defines terms and specifies requirements for the organization, facilities, staff, procedures and services of specialized centers.

The standards established in the CCS Manual are too numerous to list, but once again, several examples will illustrate the fact that these are standards of general application which the Department uses to evaluate all hospital applications for approval as CCS hematology/oncology centers. With respect to required procedures, section 3.27.4.D.1 provides:

"Decisions concerning acceptance, delivery of services, and continuity of care shall be made at a team conference."

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The standards for facilities which must be available at hematology/oncology centers include those set forth in section 3.29.3.B.2, which provides:

"In-house laboratory capability shall be such as to provide all tests and studies necessary for the diagnosis and treatment of hemoglobinopathies."

As we noted in the background discussion of this determination, the CCS program draws only its general outline from statutory material. A few formally adopted regulations add to this framework, but they only cover a small portion of the program's activities. The large majority of the specific instructions for operation of the CCS program are contained only in the CCS Manual. The Department relies upon that Manual to spell out the particular characteristics of the program. The standards set forth in the Manual apply to specific aspects of the CCS program. They describe the required qualifications of CCS program participants and require patient referral in certain situations. The standards which are the subject of this determination are regulations because they are applied by the Department generally and they implement, interpret, and make specific the CCS program which the Health and Safety Code requires the Department to administer.

WE CONCLUDE THAT THE DEPARTMENT'S RULES AND CRITERIA FOR THE DESIGNATION OF HEMATOLOGY/ONCOLOGY CENTERS UNDER THE CCS PROGRAM AND THE DEPARTMENT'S POLICY OF REQUIRING JUVENILE PATIENTS WHO SUFFER FROM ONCOLOGICAL AND HEMATOLOGICAL DISEASES TO BE REFERRED TO SUCH CENTERS FOR DIAGNOSIS, EVALUATION AND DEVELOPMENT OF A TREATMENT PLAN ARE REGULATIONS AS DEFINED IN GOVERNMENT CODE SECTION 11342, SUBDIVISION (b).

SECOND, WE INQUIRE WHETHER THE CHALLENGED RULES FALL WITHIN ANY LEGALLY ESTABLISHED EXCEPTION TO APA REQUIREMENTS.

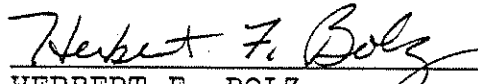
Rules concerning certain activities of state agencies -- for instance, "internal management"--are not subject to the procedural requirements of the APA.²⁰ We conclude that none of the recognized exceptions (set out in footnote 20) apply to the subject regulatory guidelines.

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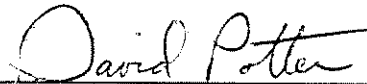
III. CONCLUSION

For the reasons set forth above, OAL finds that the Department's rules and criteria for the designation of hematology/oncology centers under the CCS program and the Department's policy of requiring the referral of juvenile patients who suffer from oncological and hematological diseases to such centers for diagnosis, evaluation, and development of a treatment plan are (1) subject to the requirements of the APA, and (2) are "regulations" as defined in the APA.

DATE: August 27, 1987



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- 1 In this proceeding David Rosenberg, Esq., of Diepenbrock, Wulff, Plant and Hannegan, 300 Capitol Mall, 17th Floor, Sacramento, California 95814, (916) 323-6225, represented Mercy Hospital of Sacramento (Requester). The Department of Health Services was represented by Diane E. Shell, Deputy Director/Chief Counsel, 714 P Street, Sacramento, California 95814.
- 2 The correct punctuation is "Children's," which we will use in this Determination. Some of the regulations adopted by the Department and the CCS Manual use the term "Children Services."
- 3 We do not intend to indicate that any statute applied to the Department specifically requires these rules and policy to be adopted pursuant to the Administrative Procedure Act (APA), but that the APA generally requires such adoption.
- 4 The legal background of the regulatory determination process --including a survey of governing case law--is discussed at length in note 2 to 1986 OAL Determination No. 1 (Board of Chiropractic Examiners, April 9, 1986, Docket No. 85-011), California Administrative Notice Register 86, No. 16-Z, April 18, 1986, pp. B-14--B-16; typewritten version, notes pp. 1-4. See also Wheeler v. State Board of Forestry (1983) 144 Cal.App.3d 522, 192 Cal.Rptr. 693 (overturning Board's decision to revoke license for "gross incompetence in . . . practice" due to lack of regulation articulating standard by which to measure licensee's competence); City of Santa Barbara v. California Coastal Zone Conservation Commission (1977) 75 Cal.App.3d 572, 580, 142 Cal.Rptr. 356, 361 (rejecting Commission's attempt to enforce as law a rule specifying where permit appeals must be filed--a rule appearing solely on a form not made part of the CAC). For an additional example of a case holding a "rule" invalid because (in part) it was not adopted pursuant to the APA, see National Elevator Services, Inc. v. Department of Industrial Relations (1982) 136 Cal.App.3d 131, 186 Cal.Rptr. 165 (internal legal memorandum informally adopting narrow interpretation of statute enforced by DIR). Also, in Association for Retarded Citizens--California v. Department of Developmental Services (1985) 38 Cal.3d 384, 396 n.5, 211 Cal.Rptr. 758, 764 n.5, the court avoided the issue of whether a DDS directive was an underground regulation, deciding instead that the directive presented "authority" and "consistency" problems. In Johnston v. Department of Personnel Administration (1987) 236 Cal.Rptr. 853, 857, the Third District Court of Appeal found that the Department of Personnel Administration's "administrative interpretation" regarding the protest procedure for transfer of civil service

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employees was not promulgated in substantial compliance with the APA and therefore was not entitled to the usual deference accorded to formal agency interpretation of a statute.

- 5 As we have indicated elsewhere, an OAL determination concerning a challenged "informal rule" is entitled to great weight in both judicial and adjudicatory administrative proceedings. See 1986 OAL Determination No. 3 (Board of Equalization, May 28, 1986, Docket No. 85-004), California Administrative Notice Register 86, No. 24-Z, June 13, 1986, p. B-22; type-written version, pp. 7-8; Culligan Water Conditioning of Bellflower, Inc. v. State Board of Equalization (1976) 17 Cal.3d 86, 94, 130 Cal.Rptr. 321, 324-325. The Legislature's special concern that OAL determinations be given appropriate weight in other proceedings is evidenced by the directive contained in Government Code section 11347.5: "The office's determination shall . . . be made available to . . . the courts." [Emphasis added.]
- 6 No public comments were received concerning this Request for Determination. The Department of Health Services did not submit a Response to the Request for Determination.

In general, in order to obtain full presentation of contrasting viewpoints, we encourage affected agencies to submit responses. If the affected agency concludes that part or all of the challenged rule is in fact an underground regulation, it would be helpful, if circumstances permit, for the agency to concede that point and permit OAL to devote its resources to analysis of truly contested issues.
- 7 An OAL finding that a challenged rule is illegal unless adopted "as a regulation" does not of course exclude the possibility that the rule could be validated by subsequent incorporation in a statute.
- 8 We refer to the portion of the APA which concerns rulemaking by state agencies: Chapter 3.5 of Part 1 ("Office of Administrative Law") of Division 3 of Title 2 of the Government Code, sections 11340 through 11356.
- 9 The Robert W. Crown California Children's Services Act is codified in statutes set forth in Article 2 of Chapter 2, Part I, Division 1 of the Health and Safety Code (sections 248 through 273).
- 10 We discuss the affected agency's rulemaking authority (see Gov. Code, section 11349, subd. (b)) in the context of re-

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viewing a Request for Determination for the purposes of exploring the context of the dispute and of attempting to ascertain whether or not the agency's rulemaking statute expressly requires APA compliance. If the affected agency should later elect to submit for OAL review a regulation proposed for inclusion in the California Administrative Code, OAL will, pursuant to Government Code section 11349.1, subdivision (a), review the proposed regulation in light of the APA's procedural and substantive requirements.

The APA requires all proposed regulations to meet the six substantive standards of necessity, authority, clarity, consistency, reference, and nonduplication. OAL does not review alleged "underground regulations" to determine whether or not they meet the six substantive standards applicable to regulations proposed for formal adoption.

The question of whether the challenged rule would pass muster under the six substantive standards need not be decided until such a regulatory filing is submitted to us under Government Code section 11349.1, subdivision (a). At that time, the filing will be carefully reviewed to ensure that it fully complies with all applicable legal requirements.

Comments from the public are very helpful to us in our review of proposed regulations. We encourage any person who detects any sort of legal deficiency in a proposed regulation to file comments with the rulemaking agency during the 45-day public comment period. Such comments may lead the rulemaking agency to modify the proposed regulation.

If review of a duly-filed public comment leads us to conclude that a regulation submitted to OAL does not in fact satisfy an APA requirement, OAL will disapprove the regulation. (Gov. Code, § 11349.1.)

- 11 Government Code section 11342, subdivision (a). See Government Code sections 11346; 11343. See also 27 Ops.Cal.Atty.Gen. 56, 59 (1956).
- 12 See Poschman v. Dumke (1973) 31 Cal.App.3d 932, 943, 107 Cal.Rptr. 596, 609.
- 13 Health and Safety Code section 249.
- 14 Health and Safety Code sections 208 and 249.
- 15 The CCS regulations codified in Title 17 are found in Part I,

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Chapter 4, Subchapter 3, Group 1 (sections 2890 - 2923).

- 16 The CCS Manual is divided into eight chapters. The chapters are identified by the following titles:

Chapter 1	General Administrative Procedures
Chapter 2	Medical Eligibility
Chapter 3	Vendor Standards
Chapter 4	The California Children Services Program for Children With Cerebral Palsy And Other Physical Handicaps In The Public Schools
Chapter 5	Payment To Providers Of Service
Chapter 6	Residence Requirements, Financial Eligibility, And Repayment Requirements
Chapter 7	Referral Procedures
Chapter 8	Forms and Records

The Request for Regulatory Determination submitted by Mercy Hospital of Sacramento did not seek OAL review of the entire CCS Manual. Rather, the request identified the specific policies, rules and procedures which are examined in the body of this Determination as the subject of the request. In preparing this Determination, OAL did not review the rest of the CCS Manual. OAL expresses no opinion concerning the validity of the portion of the Manual which it has not reviewed.

- 17 Informally adopted rules are rules which were not adopted after public notice and pursuant to the requirements of the APA.

- 18 A letter from Esmond S. Smith, M.D., Chief, CCS to Tillman M. Moore, M.D., Orthopaedic Hospital, Los Angeles, dated June 16, 1980, indicates there is, or was, one exception to the application of Hemophilia Center rules to hematology/oncology centers. The letter indicates that the requirement for a physical therapist as a member of the basic health team (core team) (CCS Manual section 3.27.3.A.4) does not apply to hematology/oncology centers.

- 19 See Faulkner v. California Toll Bridge Authority (1953) 40 Cal.2d 317, 324 (point 1); Winzler & Kelly v. Department of

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Industrial Relations (1981) 121 Cal.App.3d 120, 174 Cal.Rptr. 744 (points 1 and 2); cases cited in note 2 of 1986 OAL Determination No. 1. A complete reference to this earlier Determination may be found in note 2 to today's Determination.

20 The following provisions of law may also permit agencies to avoid the APA's requirements under some circumstances, but do not apply to the case at hand:

- a. Rules relating only to the internal management of the state agency. (Gov. Code, sec. 11342, subd. (b).)
- b. Forms prescribed by a state agency or any instructions relating to the use of the form, except where a regulation is required to implement the law under which the form is issued. (Gov. Code, sec. 11342, subd. (b).)
- c. Rules that "[establish] or [fix] rates, prices or tariffs." (Gov. Code, sec. 11343, subd. (a)(1).)
- d. Rules directed to a specifically named person or group of persons and which do not apply generally or throughout the state. (Gov. Code, sec. 11343, subd. (a)(3).)
- e. Legal rulings of counsel issued by the Franchise Tax Board or the State Board of Equalization. (Gov. Code, sec. 11342, subd. (b).)
- f. Contractual provisions previously agreed to by the complaining party. City of San Joaquin v. State Board of Equalization (1970) 9 Cal.App.3d 365, 376, 88 Cal.Rptr. 12, 20 (sales tax allocation method was part of a contract which plaintiff had signed without protest); see Roth v. Department of Veterans Affairs (1980) 110 Cal.App.3d 622, 167 Cal.Rptr. 552 (dictum); Nadler v. California Veterans Board (1984) 152 Cal.App.3d 707, 719, 199 Cal.Rptr. 546, 553 (same); but see Government Code section 11346 (no provision for non-statutory exceptions to APA requirements); see International Association of Fire Fighters v. City of San Leandro (1986) 181 Cal.App.3d 179, 182, 226 Cal.Rptr. 238, 240 (contracting party not estopped from challenging legality of "void and unenforceable" contract provision to which party had previously agreed); see Perdue v. Crocker National Bank (1985) 38 Cal.3d 913, 926, 216 Cal.Rptr. 345, 353 ("contract of adhesion" will be denied enforcement if deemed

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unduly oppressive or unconscionable).

The above is not intended as an exhaustive list of possible APA exceptions. Further information concerning APA exceptions is contained in a number of previously issued OAL determinations. The index of OAL Regulatory Determinations is a helpful guide for locating such information.